

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE**

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IN RE: SECOND COMPLAINT OF
DISCOUNT COMMUNICATIONS
AGAINST BELL SOUTH
TELECOMMUNICATIONS, INC.

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DOCKET NO. 00-01151
SECRETARY

RESPONSE OF DISCOUNT TO "MOTION TO REQUIRE TURNOVER OF FUNDS"

ATM/Discount Communications, Inc. ("Discount") submits the following response to the "Motion to Require Turnover of Funds to BellSouth Telecommunications, Inc."

BellSouth's Motion has no legal basis. It is premised on the notion that there are "clear orders of the TRA requiring payment" of funds into an escrow account. Motion, at 1. In fact, no such orders exist.

The escrow payments have been made, not pursuant to a TRA order, but in accordance with an escrow agreement between BellSouth and Discount. The terms of the agreement are set forth in the proposed "Order Establishing Modified Escrow Agreement," signed by Discount and BellSouth and filed on March 26, 2001.¹ According to the terms of the agreement, Discount "agrees . . . it will begin paying" \$2800 per day into an escrow account. *Id.*, at 1. Should Discount fail to make such payments, the agreement provides that "BellSouth will . . . terminate and disconnect any and all services it provides to Discount." *Id.*, at 6.

There is nothing in the agreement which requires Discount to pay – or BellSouth to accept – any "funds" other than the amounts stated in the agreement, nor is there any provision

¹ As of the date of BellSouth's motion, the proposed Order approving the modified escrow agreement has never been entered.


requiring Discount, in the event Discount breaches the agreement, to pay any money to BellSouth. In the event of a breach, BellSouth's only "remedy," as provided in the agreement, is to terminate service. BellSouth is now in the process of doing that.

The parties' current dispute is a debt collection matter, not a violation of a TRA Order. It is no different than any other dispute between BellSouth and a customer who, having failed to pay his bill is no longer receiving service. The TRA is not a collection agency. Any subsequent effort by BellSouth to collect the unpaid bills is a matter for judicial system, not the TRA.²

In sum, there is no legal basis for BellSouth's Motion. Contrary to the Motion, there are no TRA orders "requiring payment" of the escrow funds. There is only an agreement³ between the parties which provides that, in the event the payments cease, BellSouth will terminate service. Any other remedy BellSouth may have lies in court.

Respectfully submitted,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

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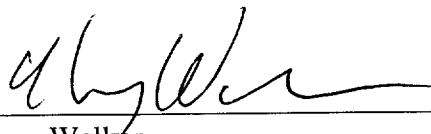
² BellSouth has stated that Discount never offered partial payment of the escrow monies. According to David Mills, president of Discount, he did, in fact, offer BellSouth a partial payment but was told by a BellSouth representative that she had no authority to discuss a settlement. BellSouth now apparently wants to terminate service *and* take whatever partial payment Discount could have made.

³ The Hearing Officer's Orders of August 1, 2001 (at pp. 5, 6) and September 14, 2001 (at 4, 19) repeatedly describe the escrow arrangement as an "agreement" between the parties pursuant to which BellSouth's continuation of service was conditioned upon Discount's continuing to make payments to the escrow account.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via fax or hand delivery and U.S. mail to the following on this the 2nd day of October, 2001.

Guy Hicks, Esq.
BellSouth Telecommunications, Inc.
333 Commerce St., Suite 2101
Nashville, TN 37201-3300

A handwritten signature in black ink, appearing to read 'H. Walker', is written over a horizontal line.

Henry Walker